

[Senate, June 24, 2010 - Substituted by amendment by the Senate (Senator Hart) for Senate, No. 2268]



IN THE YEAR OF TWO THOUSAND AND NINE

4 MOTOR VEHICLE DIAGNOSIS, SERVICE INFORMATION AND RIGHT TO
5 REPAIR.

6 Section 1. As used in this chapter the following words shall, have the following
7 meanings, unless the context clearly requires otherwise:—

8 "Authorized motor vehicle repair facility" a person or business that is associated with an
9 authorized dealer or motor vehicle manufacturer.

10 “Dealer”, a business authorized by a new vehicle manufacturer to lease or sell the
11 manufacturer’s new motor vehicles at retail, under a franchise agreement; provided, however, that the
12 business is engaged in the diagnosis, service, maintenance or repair of motor vehicles or motor vehicle
13 engines under the franchise agreement.

14 “Franchise agreement”, an oral or written arrangement for a definite or indefinite
15 period in which a manufacturer or distributor grants to a dealer a license to use a trade name, service
16 mark or related characteristic and in which there is a community of interest in the marketing of new
17 motor vehicles or services related thereto at wholesale, retail, leasing or otherwise; provided, however,
18 this shall include the performance or provision of a warranty or recall repair work by a dealer on behalf
19 of a manufacturer.

20 “Independent motor vehicle repair facility" a person or business operating in the commonwealth
21 that is not associated with a manufacturer's authorized dealer of motor vehicles, which is engaged in the
22 diagnosis, service, maintenance or repair of motor vehicles or motor vehicle engines.

23 “Manufacturer” any person engaged in the business of manufacturing or assembling new motor
24 vehicles.

25 “Motor vehicle owner" a person who owns, leases or otherwise has the legal right to use and
26 possess a motor vehicle or the agent of that person.

27 “Trade secret” a formula, pattern, device or compilation of information which is used in a
28 business, which gives the business an opportunity to obtain an advantage over competitors who do not
29 know or use it and which the business has taken all reasonable and proper steps to keep secret; provided,
30 however, that a trade secret does not include matters of public knowledge or of general knowledge in an
31 industry.

32 Section 2. The manufacturer of a motor vehicle sold in the commonwealth shall make
33 available for purchase to independent motor vehicle repair facilities and motor vehicle owners
34 in a non-discriminatory basis and cost as compared to the terms and costs charged to an
35 authorized dealer or authorized motor vehicle repair facility all diagnostic, service and repair
36 information that the manufacturer makes available to its authorized dealers and authorized
37 motor vehicle repair facilities in the same form and the same manner as it is made available to
38 authorized dealers or an authorized motor vehicle repair facility of the motor vehicle. The
39 distribution of such information shall be in a form and manner that does not alter or affect the
40 contractual relationship between the manufacturer and its authorized dealer; provided, however,
41 that such contractual relationship shall not alter the manner and form of diagnostic service and
42 repair information that independent repair facilities obtain through a manufacturers repair
43 website.

44 The information must include, but is not limited to, the following: (1) all diagnostic,
45 service and repair information and tools related to the proper and complete diagnosis, service
46 and repair of a motor vehicle including any diagnostic codes used to activate all controls that are
47 required to be activated by a repair technician to diagnose, service and repair the motor vehicle;
48 and (2) tools and software capabilities, including wireless capabilities, related to the diagnosis,
49 service and repair of a motor vehicle.

50 Section 3. (a) Failure to comply with the requirements of section 2 shall be an unfair or
51 deceptive trade act or practice under section 2 of chapter 93A. A motor vehicle owner or an independent
52 motor vehicle repair facility may institute a civil action for equitable relief or damages in any court of
53 competent jurisdiction as a remedy for the violation.

54 (b) No person may bring an action against a manufacturer under this section unless the person
55 has first provided documentation which shall include, but not be limited to, the following requirements:
56 (1) the person shall provide written information confirming that the person has visited the relevant
57 manufacturer website and attempted to effect a proper repair utilizing information provided on the
58 website, including communication with technician assistance if made available by the manufacturer; and
59 (2) the person shall provide a written affirmation confirming that the person sought the assistance of
60 other applicable information sources to effect the necessary repair, including, but not limited to, the
61 assistance of the National Automotive Service Task Force, if practicable.

62 Section 4. Notwithstanding any other general or special law or rule or regulation to the
63 contrary, nothing in this chapter shall require a motor vehicle manufacturer to divulge
64 information that is a trade secret or other such proprietary information related to the
65 development or use of the manufacturer's repair and diagnostic tools, equipment and parts,
66 except pursuant to a valid contract or agreement executed by a manufacturer and the other
67 person

68 Section 5. Notwithstanding any other general or special law or rule or regulation to the contrary,
69 nothing in this chapter shall be read, interpreted or construed to abrogate, interfere with, contradict or
70 alter the terms of a franchise agreement and the business practices of the parties thereunder, executed
71 and in force between a dealer and a manufacturer, including, but not limited to, the performance or
72 provision of warranty or recall repair work by a dealer on behalf of a manufacturer under the franchise

73 agreement; provided, however, that any provision in the franchise agreement that purports to waive,
74 avoid, restrict or limit a manufacturer's compliance with this chapter shall be void and unenforceable.